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AUTHOR Forsythe, Ralph A.
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ABSTRACT

To determine the historical-legal development and current legal status of pupil transportation as practiced in U.S. public schools, State constitutional provisions, State legislation, and court decisions related to pupil transportation are analyzed. Legal constraints affecting the following areas of pupil transportation programs are reviewed: (1) Scope and general operational authority, (2) financial authority, (3) State organizational patterns of governance, (4) liability, and (5) district purchasing and contracting authority. The findings indicate a current general consensus of the law with regard to (1) State legislative authority to enact pupil transportation legislation, (2) wide discretion of local boards in program operation, and (3) authority of the local board to purchase equipment and contract for services. Less consensus exists on the legal status of the transportation of nonpublic students, district tort liability, transportation for noneducational uses, and the extent and weight of State agency authority over transportation programs. An annotated list of 90 relevant court decisions and a bibliography of 61 citations are included. [Tables 5-10, 12-16 may be of poor quality in hard copy due to small print.] (JH)

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The Legal Status (Historical Development, Current Statutes and Court Decisions) of Pupil Transportation in the Public Schools of the United States

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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Ralph A. Forsythe

University of Denver
Denver, Colorado 80210

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SUMMARY

Purpose of the Study

The purpose of the study was to determine the historical-legal development and current legal status of pupil transportation as practiced in the public schools of the United States. The legal status consists of the substantive and common law principles which regulate or govern local school pupil transportation programs.

Research Methods and Procedures

The basic research design used in the study was that of historical-legal research. The historical-legal development of public school pupil transportation was developed to provide the necessary background for determining the current legal status of transportation programs. The background was developed from a review and analysis of historical and educational literature, legal writings and references, government publications, and writings in general school administration.

The current legal status of school transportation programs was determined from three basic sources: (a) state constitutional provisions, (b) state legislative enactments, and (c) court of record cases.

An analysis was made of the constitutional, statutory, and case law data using subdivisions developed in the study. The analysis of the data collected allowed conclusions to be drawn, in the form of principles of law governing public school pupil transportation in the United States.

Scope of the Study

The current legal status of pupil transportation programs in the United States was determined from the constitutions and statutes of the fifty states in effect as of January 1, 1969 and from the court of record cases reported from 1920 to 1968 inclusive.

For the purpose of the study, pupil transportation programs were subdivided into six general areas of concern. The areas were: (a) scope of transportation programs, (b) school district financial authority for pupil transportation, (c) state organizational patterns governing pupil transportation, (d) liability for transportation programs, (e) district purchasing and contracting powers related to pupil transportation, and (f) general operational authority. Each subdivision was further divided to permit a more detailed analysis.

Major Findings

The following is a summary of the major findings of the study:

1. School pupil transportation programs grew from a measure designed to facilitate equal educational opportunity into a significant school enterprise whose scope encompassed many educational undertakings.

2. School consolidation, the development of the automobile, highway improvement, and swelling school enrollment caused a spectacular growth in school transportation during the second quarter of the twentieth century.

3. School transportation legislation changed from general, broad authorization to specific, directive control over most aspects of pupil transportation programs.

4. The law is in general agreement throughout the nation as to:

   a. the authority of state legislatures to enact pupil transportation legislation.

   b. the wide discretion of local school boards in the operation of school transportation programs.

   c. the authority of school boards to purchase equipment, employ drivers, and contract for transportation services.

5. Less general agreement is found in relation to matters such as:

   a. the transportation of non-public school pupils.

   b. the liability of school districts for injuries and damages as the result of school bus accidents.

   c. the extension of pupil transportation to include activities, non-educational uses, and for the purpose of achieving school racial balance.

   d. the extent and weight of state agency authority over pupil transportation programs.

INTRODUCTION

Pupil transportation systems in the public schools of the nation developed out of the desire to implement the American dream of equal educational opportunity for every child, no matter where he might reside. Transportation of school pupils became necessary as rural schools were consolidated into educational centers remote from the residence of many pupils. The expanded use of school transportation meant distance from the school would be no great barrier to the acquisition of that education which the state guaranteed gratuitiously. Thus, pupil transportation became one more means of assuring the achievement of the great American dream of a free and accessible education at public expense for every child.

Urban school districts also began to transport pupils, because even in cities, distances became too great for pupils to walk to school. As cities became clogged with vehicular traffic, school districts were forced to make additional transportation facilities available to insure the safety of pupils.

Later, a new dimension was added to pupil transportation when efforts to broaden the experiences of children led to the use of school buses as instructional tools. Buses were widely used for excursions, field trips, and for other extensions of the instructional program in addition to their use for transporting pupils to and from school.

Because of the growth of school population and the dimensions added to the use of school buses, pupil transportation was one of the fastest growing aspects of public school systems in recent years. The year 1966-67 was illustrative of the magnitude of the pupil transportation enterprise. In that year 16,684,922 pupils were transported to the public schools of the nation at an expense of $763,600,617. The cost of transporting pupils was a significant portion of school operating expenditures.

The rapid growth of pupil transportation services resulted in a myriad of variations between the states in pupil transportation legislation and practice. Court decisions, statutes, and administrative rulings related to pupil transportation have often been conflicting and inconsistent.

OBJECTIVE

The purpose of the study was to determine the historical-legal development and current legal status of pupil transportation in the

public schools of the United States. The legal principles which governed and controlled pupil transportation practices made up the legal status.

RESEARCH METHODS AND PROCEDURES

The basic research design used in the study was that of historical-legal research. The historical-legal development of public school pupil transportation was developed to provide the necessary background for determining the current legal status of transportation programs. This background was developed from a review and analysis of historical and educational literature, legal writings and references, government publications, and writings in general school administration.

The current legal status of school transportation programs was determined from three basic sources: (a) state constitutional provisions, (b) state legislative enactments, and (c) court of record cases.

The constitutions and statutes of all fifty states were surveyed and all references pertinent to the problem were categorized and recorded. Court of record cases pertaining to the problem were identified through use of the Descriptive Word Index, Decennial Digests, and General Digests of the American Digest System. Additional cases and general principles of law were obtained from the appropriate units of American Jurisprudence 2d and Corpus Juris Secundum. The cases noted were then briefed from the National Reporter System, the United States Supreme Court Reports, and the various state reporters. Cases used in the final report were shepardized to determine their most current status.

An analysis was made of the constitutional, statutory, and case law data utilizing the categories developed in the study. The analysis of the data collected allowed conclusions to be drawn, in the form of principles of law governing public school transportation in the United States.

HISTORICAL-LEGAL DEVELOPMENT OF PUBLIC SCHOOL PUPIL TRANSPORTATION PROGRAMS

The need for pupil transportation in this country has existed since the formation of the first school. However, from early colonial days until late in the nineteenth century, transportation facilities in much of the nation were severely limited. During this time, the child who lived more than a walking distance from school traveled by whatever means his parents could provide. Pupil transportation was considered to be the private concern of parents rather than a function of some governmental unit.

The early attempts to make educational facilities accessible to every child resulted in the placement of school buildings in almost every community. As the population spread from the early compact settlements, access to schools became an increasingly difficult problem to solve.

New England educators were the first to realize that extreme multiplicity of schools would inevitably result in unequal educational opportunities for children as well as in inefficient use of school funds. This realization led to legislative authorization for schools to consolidate. Massachusetts was the first state to so act when the legislature of that state passed a union school law in 1838. Within the next twenty years, eight states had followed Massachusetts in the school consolidation movement. The increase in school consolidation caused an increased need for the transportation of pupils.

Massachusetts again was the first state to meet an educational need through a legislative enactment. In 1869, the Massachusetts legislature enacted a law which provided that any town in the Commonwealth could raise by taxation or otherwise, and appropriate money to provide for the transportation of pupils to and from the public schools.

The importance of the law was illustrated by the fact that not only was pupil transportation established as a public function but also was established as a legitimate part of the public tax program.

As the educational influence of Massachusetts spread, so spread the practice of authorizing school consolidation and the transportation of pupils. Early authorization for school districts to consolidate schools preceded the authorization for the transportation of pupils by a number of years. After 1890, legislatures often combined school consolidation and pupil transportation legislation into a single enactment.

Twenty-four states had authorized school consolidation by 1900. All states had followed suit by 1913. The year in which each state enacted school consolidation legislation appears in Table 1.

Similarly, eighteen states had legislatively given authority for school districts to provide pupil transportation by 1900. All states had enacted laws which either permitted or compelled the transportation of pupils by 1919. The year in which each state authorized the transportation of public school pupils appears in Table 2.

By the end of World War I, several factors were in operation which were to have a great impact upon pupil transportation programs. First, the automobile was becoming commonplace even in rural America. The number of registered motor vehicles in the nation tripled between 1919 and 1929. Second, the number of miles of surfaced rural roads nearly doubled during the same period. Finally, the enrollment in public elementary and secondary schools increased by nearly one-fourth. These

Table 1

Year of Statutory Authorization for School Consolidation by State, 1838-1913

Date	State	Date	State
1838	Massachusetts	1901	California
1839	Connecticut	1901	Missouri
1843	Michigan	1901	Minnesota
1844	Vermont	1901	Pennsylvania
1847	Ohio	1902	Louisiana
1853	New York	1903	Virginia
1854	Maine	1903	Tennessee
1956	Wisconsin	1903	Oregon
1857	New Hampshire	1903	Oklahoma
1861	Delaware	1904	Maryland
1873	Iowa	1905	Illinois
1873	Indiana	1907	Arizona
1885	North Carolina	1907	New Mexico
1866	New Jersey	1908	Kentucky
1889	Florida	1908	West Virginia
1889	Nebraska	1909	Colorado
1890	Washington	1910	Alabama
1893	Texas	1910	Mississippi
1896	Utah	1911	Arkansas
1896	South Carolina	1911	Georgia
1897	Kansas	1913	Montana
1898	Rhode Island	1913	South Dakota
1899	North Dakota	1913	Wyoming
1900	Idaho	1913	Nevada

Source: J. F. Abel, Consolidation of Schools and Transportation of Pupils, Bulletin No. 41, U.S. Department of the Interior, Bureau of Education, Washington: Government Printing Office, 1923, p. 22.

Table 2

Year of Statutory Authorization for Public Pupil Transportation by State 1869-1919

Date	State	Date	State
1869	Massachusetts	1903	Virginia
1876	Vermont	1904	Maryland
1880	Maine	1905	Oklahoma
1885	New Hampshire	1905	Utah
1889	Florida	1907	Missouri
1893	Connecticut	1908	West Virginia
1894	Ohio	1909	Colorado
1895	New Jersey	1910	Mississippi
1896	New York	1911	Arkansas
1897	Iowa	1911	Georgia
1897	Nebraska	1911	Illinois
1897	Pennsylvania	1911	North Carolina
1897	Wisconsin	1912	Kentucky
1898	Rhode Island	1912	South Carolina
1899	Kansas	1912	Arizona
1899	North Dakota	1913	Idaho
1899	South Dakota	1913	Tennessee
1899	Indiana	1915	Nevada
1901	California	1915	Alabama
1901	Minnesota	1915	Texas
1901	Washington	1916	Louisiana
1903	Michigan	1917	New Mexico
1903	Montana	1919	Delaware
1903	Oregon	1919	Wyoming

Adapted from: J. F. Abel, Consolidation of Schools and Transportation of Pupils, Bulletin No. 41, U.S. Department of the Interior, Bureau of Education, Washington: Government Printing Office, 1923, p. 22.

factors, accompanied by a continuing consolidation of schools, gave an impetus to pupil transportation programs. The growth of pupil transportation programs since 1919 is shown in Table 3.

School pupil transportation statutes in the various states were quite general until well into the twentieth century. Statutory provisions commonly permitted or directed boards of education to transport pupils living at such a distance from school as to render their attendance impracticable without transportation. Even following the inclusion of specific distance requirements for transportation eligibility, considerable confusion existed in the interpretation of the statutes. The lack of specificity resulted in many court interpretations regarding the intent and applicability of the statutes.

The number of pupil transportation cases to reach courts of record appears in Table 4. More than fifty per cent of the pupil transportation cases reached the courts in the three decades following 1926. The greatest number of cases were litigated between 1926 and 1936. Thus many of the common law precedents concerning pupil transportation were established before the middle of the twentieth century.

In developing the historical-legal background, primary attention was focused on the pupil transportation cases reaching the courts between 1920 and 1958. The year 1920 was significant for two reasons: (a) by 1920, all states had given legislative authorization for the transportation of school pupils at public expense, and (b) by 1920, the motorbus had begun to allow the rapid expansion of pupil transportation services. Pupil transportation litigation which occurred in the decade 1959 to 1968 was treated as part of the current legal status in a later section of the study. All references to court decisions were keyed by number to the case citation in the annotated case table in Appendix C.

The courts of the period had uniformly held that legislative authorization for the transportation of school pupils at public expense was constitutional. In upholding the constitutionality of statutes which authorized transportation the courts rejected charges that such legislation constituted: (a) the granting of public funds for a private purpose (1), (b) the enactment of laws for individual benefit (2), (c) a violation of the right of due process (3), and (d) a delegation of legislative authority (4).

The majority of court authority also held that a school board could not expend funds for pupil transportation unless it was specifically authorized to do so by statute (6). However, a few courts held that a school board might provide transportation under implied powers (8).

Statutes using the words "may provide transportation" were held to be permissive in nature, allowing boards to exercise discretion (10); while "shall provide" was held to be mandatory upon boards (11). "When necessary" was held to be mandatory in some instances depending upon the circumstances of the case (13). The use of "convenience of access"

Table 3

GROWTH OF PUBLIC SCHOOL PUPIL TRANSPORTATION, BIENNIALLY 1919-1967

Year	Number of Pupils Transported	% of Pupils Transported	Number of Vehicles Used	Amount of Public Funds Expended	Yearly Cost Per Pupil Transported
1919-1920	356,000	1.7	(a)	14,538,000	40.79
1921-1922	594,000	2.6	(a)	21,817,000	36.75
1923-1924	837,000	3.4	(a)	29,627,000	35.38
1925-1926	1,112,000	4.5	(a)	35,053,000	31.53
1927-1928	1,251,000	5.0	(a)	39,953,000	31.95
1929-1930	1,902,826	7.4	58,016 (b)	54,823,000	28.81
1931-1932	2,419,173	9.2	71,194	58,078,000	24.01
1933-1934	2,794,724	10.6	77,042	53,907,774	19.29
1935-1936	3,250,658	12.3	(a)	62,652,571	19.27
1937-1938	3,769,242	14.5	92,152	75,636,956	20.07
1939-1940	4,144,161	16.3	(a)	83,283,000	20.10
1941-1942	4,503,001	18.3	92,516	92,921,805	20.64
1943-1944	4,512,412	19.4	92,819	107,754,467	23.88
1945-1946	5,056,966	21.7	89,929	129,756,375	25.66
1947-1948	5,854,041	24.4	(a)	176,263,000	30.11
1949-1950	6,947,384	27.7	115,202	214,503,541	30.88
1951-1952	7,697,130	29.0	(a)	268,827,000	34.93
1953-1954	8,906,126	30.9	(a)	308,704,303	34.66
1955-1956	10,199,276	35.0	159,764	356,349,783	34.94
1957-1958	11,343,132	36.5	170,689	419,539,863	36.99
1959-1960	12,700,989	37.6	179,780	474,202,128	37.34
1961-1962	13,678,547	38.1	191,160	540,168,114	39.49
1963-1964	15,559,524	38.7	200,116	612,310,333	39.35
1965-1966	16,423,396	39.7	210,692	696,325,421	42.40
1966-1967	16,684,922	40.0	221,722	763,600,617	45.77

(a) Data not available

(b) Includes 3,566 horse-drawn conveyances

Table 4

Number of Pupil Transportation Cases Reaching Courts of Record 1658-1968

Period	Number of Cases
1658-1896	5
1897-1906	2
1907-1916	14
1916-1926	35
1926-1936	80
1936-1946	60
1946-1956	54
1956-1966	59
1966-1968	19
Total	328

Source: Decennial Digests of the American Digest System.

in enabling legislation was held to imply a mandatory requirement for transportation (14).

Courts further held that boards were not relieved of the mandatory duty to provide transportation due to the high cost of transportation (15) or to their own failure to appropriate funds (16).

School boards were given wide discretionary powers by the courts over such matters as: the adequacy of bus shelters (17), discontinuance of bus service under permissive legislation (18), decisions about who should be transported (19), and making payments to parents in lieu of providing transportation (20). The courts were reluctant to intervene in such matters unless board discretion was abused through arbitrary or capricious action.

Less discretion was allowed when transportation was provided as a part of school consolidation plans (21). Greater duty existed to transport pupils when schools had been closed or combined.

The transportation of parochial school pupils first became the subject of litigation in an Oklahoma case in 1912 (22). In that case, the court held that a statute requiring public carriers to transport public school pupils at reduced rates encompassed parochial pupils as well.

In later cases the courts were divided as to the constitutionality of transporting non-public school pupils at public expense. By 1946, eleven decisions had been rendered on the subject. The courts in seven instances held that the use of public funds for the transportation of parochial and non-public school pupils violated constitutional prohibitions against aid to sectarian institutions (23). However, four courts had upheld the use of public funds to transport pupils to parochial schools citing: the state's function of enforcing school attendance (24), the state's responsibility for protecting children on the highways (25), the valid use of police power for a public purpose (26), and the fact that the child was benefited rather than the institution he attended (27).

The United States Supreme Court received its first and only parochial school transportation case in 1947 (28). The court held that a New Jersey statute, which provided public school transportation benefits for parochial school pupils, was not violative of the federal constitution. This case was the culmination of the controversy over the federal constitutional question of using public funds for the transportation of parochial school pupils. However, the constitutionality of such transportation in the various states was still unresolved.

Following the Supreme Court test, a Kentucky court prohibited the use of public school money for transporting parochial school pupils, but did allow the use of other public funds (29).

A number of other courts subsequently ruled that the transportation of parochial school pupils at public expense violated state constitutional provisions (30).

The courts, in the first half of the twentieth century consistently held that providing transportation for pupils was a governmental function of boards of education (31). Hence, until 1959 the principle of governmental immunity from liability for torts was customarily applied to injury claims against school districts and school officials arising from school bus accidents (32).

All courts, however, were not in complete agreement concerning governmental immunity in pupil transportation cases. School officials were, upon occasion, held liable for their negligence in the operation and supervision of transportation programs (34). A few decisions allowed damages against the district itself. An Illinois court allowed damages to be assessed but restricted the settlement to non-public funds (35). Other courts interpreted state statutes as a waiver of school district immunity (36).

The effect of liability insurance on the governmental immunity of school districts was unsettled in the courts of the period. The prevailing opinion of the time was that liability insurance did not abrogate the immunity of the district or of district officials (37). On the other hand, several courts held that the purchase of liability insurance by a school district waived governmental immunity to the extent of the insurance (39).

Nearly all of the courts held that school bus drivers could be held liable for injuries resulting from their negligence. Less agreement, however, existed as to the degree of care required by a driver to avoid charges of negligence. Courts described the degree of care required as being greater than that required of common carriers (41), the same as common carrier care (42), less than common carrier care (43), and as extreme care (44).

For a driver to be held liable, the courts held that one or more conditions needed to be met: (a) the negligence was the proximate cause of the injury (45), (b) the driver must have had knowledge of the danger (46), (c) contributory negligence on the part of the injured was absent (47).

Boards were held to have wide discretion in the purchase of school buses (43); however, the discretion did not extend to the incurring of bonded indebtedness for the purchase unless specifically authorized by statute (49).

Courts were reluctant to interfere in the operational aspects of school transportation programs unless there was evidence of fraud or malfeasance. This was demonstrated by the uniformity of court decisions in upholding the discretion of school boards in routing buses (50)...

The power of school boards to provide free transportation for students attending school activities was left largely unsettled by the courts of the period. Several courts strictly interpreted the "to and from school" clauses in pupil transportation statutes and held that boards had no discretion to so extend transportation services (51). Other courts indicated that transportation could or should be provided for outside of school activities (52); while one court allowed free transportation for students who were required to attend the activities (53).

Another issue which was not definitely resolved prior to 1959 concerned the authority of school boards to transport pupils outside of the local district. A number of courts held that school boards were without authority to transport pupils outside of the district in light of the statutes then in existence (54). Conversely, a number of courts interpreted statutes as allowing the transportation of pupils outside the district (55).

CURRECT LEGAL STATUS

The current legal status of pupil transportation programs in the public schools of the United States was determined from the constitutions and statutes of the fifty states in effect as of January 1, 1969, from the legal precedents established in the historical-legal development of transportation programs, and from the court of record cases reported from 1959 to 1968 inclusive.

For the purpose of this study, pupil transportation programs were subdivided into six general areas of concern. The areas were: (a) scope of transportation programs, (b) school district financial authority for pupil transportation, (c) state organizational patterns governing pupil transportation, (d) liability for transportation programs, (e) district purchasing and contracting powers related to pupil transportation, and (f) general operational authority. Each subdivision was further divided to permit a more detailed analysis.

Scope of Transportation Programs

The scope of pupil transportation programs was divided into the categories of: (a) general authority, (b) distance specifications, (c) transportation of non-public school pupils, and (d) transportation for exceptional children.

General authority. The preponderance of court authority has continued to assert that the providing of pupil transportation by school districts is a governmental function (56). The constitutionality of legislation authorizing the transportation of pupils to public schools

has been well-established. Most litigation concerning school board authority for providing transportation has centered around the duties imposed by transportation statutes. Recent courts have consistently held that no duty is conferred upon school boards to provide transportation beyond specific statutory requirements (57).

The statutes of seventeen states contain mandatory provisions for the transportation of certain classifications of school pupils. The mandatory provisions often related to types of school districts: to wit consolidated districts or to children residing a specified distance from school, usually 1½ to 2 miles.

The statutes of all but three states contained some provision for pupil transportation which was permissive in nature. Again, the provisions were usually related to district classification or distance requirements.

Discretionary authority of school boards over transportation conducted under permissive legislation was held to include the discretion to discontinue service due to hazards (59), operational problems (60), but not on the basis of operational expense alone (61). The existence of hazards also prompted one court to require a school board to initiate pupil transportation (62).

Distance specifications. Distance specifications for providing pupil transportation are contained in the statutes of twenty-six states. One and one-half and two miles are the distances most frequently mentioned. Distance specifications in several instances are related to the level of the schools involved. The courts consistently upheld school boards in their close adherence to statutory distance requirements (63).

Where questions of the measurement of distance to meet statutory requirements arose, recent courts have uniformly held that the distance should be measured from the loading point to the unloading point over the shortest usually travelled route (65).

The nature of statutory authorization and the distance specifications for pupil transportation in each state are contained in Table 5.

Transportation of non-public school pupils. The constitutions of the states of Delaware, New Jersey, New York, and Wisconsin contained specific authorization for school boards to transport non-public school pupils at public expense.

Nine states had statutory provisions which permitted local school districts to transport non-public school pupils at public expense. The validity of the statutes in two states were in question, however, due to rulings by either the state supreme court or state attorney general. Two states permitted non-public pupil transportation only if the necessary expenditures were made from non-educational funds.

Table 5

General Public School Pupil Transportation Authority as Contained in the Statutes of the Fifty States

PROVISIONS	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
TRANSPORTATION REQUIRED		a					x		x				c	d	d	d									d				h			x		i			i	j	i				i	x					x	
Distance Specifications																																																		
over 1 mile															g																																			
over 1 1/2 miles														x																																			
over 2 miles									x						g														x			k																	
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over 3 miles															g																	k																	
over 3 1/2 miles																									x																								
TRANSPORTATION PERMITTED	x	x	x	x	x	x	b		x	x	x	x	x	x	x	x	x	e	x	x	x	x	x	x	x	x	x	x	x	x	x	l	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Distance Specifications																																																	
over 1 mile														x				x							x	x						g												k					
over 1 1/2 miles												x	x									t	x									g				x		x		x		x							
over 2 miles	x																															g			x														
over 2 1/2 miles																																												x			x			
over 3 miles																										x																								

a. If required by state department of education.
b. Within towns.
c. Consolidated districts.
d. Mandatory only beyond specified distance limits.
e. Permitted only beyond specified distance limits.
f. Distance varies with level of school.
g. Distance specification varies with level of school.
h. Up to and including the ninth grade.
i. In school reorganization plans.
j. For third and fourth class school districts.
k. Varies with age of pupil.
l. Below minimum distance for mandatory transportation.

School districts in sixteen states were required by statute to provide transportation for some classification of non-public school pupils. The conditions under which the transportation was to be provided varied considerably from state to state. Nine states required that transportation be provided on the same basis for non-public school pupils as for public school pupils. Seven states required the transportation to be provided only along routes established for public school pupils. One state required the parents of the non-public school pupils to pay a proportionate share of the transportation costs. A compilation of state statutory provisions relating to the transportation of non-public school pupils appears in Table 6.

The transportation of non-public school pupils at public expense was one of the most frequently litigated areas of pupil transportation in the past decade. Despite the frequent litigation, the issue remains unsettled in many states.

Recent court decisions which have sustained legislation authorizing public support of non-public school pupil transportation have done so on two general bases. First, courts have held that such legislation was for the public purpose of insuring the health, education, or safety of children (67). Secondly, some courts have held that the legislation resulted in benefit to the individual child rather than to the institution he attended (68).

Transportation of non-public school pupils at public expense was disallowed by five courts since 1958 (69). In each case, the transportation was challenged as being aid to a sectarian institutions due to the inclusion of parochial school pupils in the programs.

Transportation of exceptional children. Forty-three states have made statutory reference to the transportation of some classification of exceptional children. Handicapped and physically handicapped children were the most frequently mentioned classifications. The type of provision made for the transportation of exceptional children varied rather widely among the states. The most common provision was for the distance requirements for transportation to be waived for the type or types of exceptional children mentioned. Several states included provisions for transportation in their financial support programs for special schools. The types of exceptionality for which special transportation programs were authorized in the various states appears in Table 7.

The few cases that have been litigated concerning the transportation of exceptional children indicated that in the absence of specific statutory requirements, no mandatory duty existed for school districts to provide special transportation programs for such children (71).

Table 6

Statutory Provisions for Non-Public Pupil Transportation
in the Fifty States

PROVISIONS	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan
PERMISSIVE					x		x				x [a]						x	x	x			
Same service as to public schools					x		x				x						x	x	x			
Along established routes					x																	
Using non-educational funds																	x					
Requires approval of voters							x												x			
MANDATORY								x					x	x		x				a x	x	x
Same service as to public schools								x					x								x	
Along established routes													x	x		x					x	

PROVISIONS	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
PERMISSIVE									x			x														c		
Same service as to public schools																										x		
Along established routes									x			x																
Using non-educational funds																												
Requires approval of voters																												
MANDATORY				b			x	x		x			x		x	x	x										x	
Same service as to public schools						x	x	x		x			x				x										x	
Along established routes				x											x	x												

a. Required by legislation in twelve counties. Some counties are permitted to establish additional routes.

b. Parents or guardian must pay proportionate share of cost.

c. Opinion of Attorney General casts doubt on application of statute to non-public schools.

d. Of doubtful validity due to ruling of state supreme court.

Table 7

Special Transportation Provisions for Exceptional Children Contained in the Statutes of the Fifty States

Classification Mentioned	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
Exceptional Children		x														x	x		x																		x				x									
Physically Handicapped	x					x			x										x			x		x		a		x				x				x				x					x				
Handicapped				x				x				x	a					a		x	x		x		x	x	x		x	x	x		x	a		a	x									x	x
Mentally Retarded					x	x															x	x	x							x				x			x		x										
Mentally Gifted					x																																													
Educationally Handicapped						x																													x															
Speech Handicapped						x																																												
Special Education							x				x			x	x						x														x						x			a	x					
Crippled											x													x												x														
Trainable																							x																												
Mentally Handicapped																												x				x																		
Delinquent																																x																		
Deaf and Blind																																		x																
Defective																																																			x

a. Transportation mentioned as part of special program for which the state provides separate funding.

School District Financial Authority for Pupil Transportation

The special financial authority granted school districts for providing pupil transportation was divided into four categories. The categories were: (a) special conditions by which transportation equipment may be purchased, (b) authority to levy a special tax for transportation services, (c) authority to charge fees for transportation services, and (d) authority to make payments in lieu of providing transportation. The types of special financial authority given local districts for pupil transportation in the statutes of each state appears in Table 8.

Special conditions by which transportation equipment may be purchased. Thirteen states have given statutory authority for school districts to borrow money, issue bonds, or issue notes for the purchase of transportation equipment. Seven states have authorized the purchase of transportation equipment through deferred payment contracts. One state allows the accumulation of a special fund for the purchase of such equipment.

Authority to levy a special tax for transportation services. Eight states allow school districts to levy special taxes for the purchase and operation of transportation equipment. Such levies ordinarily require the approval of the voters of the district and were frequently combined with elections for the purpose of authorizing pupil transportation programs.

Authority to charge fees for pupil transportation. Transportation of pupils to and from school, when conducted in accordance with statutory standards, is almost universally provided without charge. However, in seven states, fees may be charged for certain supplemental or optional transportation programs. The supplemental programs mentioned by the states included transportation for school activities, transportation of non-public school pupils, transportation of pupils living less than the required distance from school, and pupils transported by municipal transit systems.

Authority to make payments in lieu of providing transportation. Twenty-five states give specific authority to school boards to make payments to parents in lieu of providing transportation, when in the judgment of the board it is more feasible or economical to do so. Frequently this authority is combined with authority to provide board and room in lieu of providing transportation.

The sole case reported in the last decade concerning the financial authority of school districts in transportation matters, was related to the collection of fees (72). In that case, the court held that fees could be charged for the transportation of high school pupils when such transportation was optional with the board of education.

Table 8

Special Financial Authority Given to School Districts for School Transportation
by the Statutes of the Fifty States

PROVISION	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
EQUIPMENT PURCHASE																																																		
Borrow, issue bonds or notes for purchase of transportation equipment				x					x					x								x		x	x			x	x							x		x					x					
Negotiate deferred payment contracts													x	x	x							x	x	x									x	x							x	x					
Accumulate special equipment funds																x																																	
LEVY TAX FOR TRANSPORTATION													x			x										x								x	x									x		x		x
CHARGE FEES FOR PUPIL TRANSPORTATION																																																
Supplemental or activity transportation programs		x											x																																	x	x	
Non-public school pupils																										x																						
Use of municipal transportation system					x																																											
Pupils living less than required distance from school													x													x																						
PAYMENTS IN LIEU OF PROVIDING TRANSPORTATION					x	x	x		x			x			x	x	x		x					x	x	x	x				x		x	x	x		x	x			x	x			x	x	x

State Organizational Patterns

Most states grant primary authority for providing pupil transportation to local boards of education. Each state, however, grants specific statutory authority to one or more state agencies for the establishment of rules and regulations governing some aspect of local pupil transportation programs. The designated regulatory agency and the types of control specified in each state are shown in Table 9.

Regulatory agency. The state education agency was mentioned in the statutes of forty-six states as having some direct control over the transportation of pupils. The authority given the state education agency was frequently shared with one or more other state agencies. The state highway or safety agency and the state motor vehicle department were those most frequently given authority to assist the educational agency.

Courts in Minnesota and Connecticut have ruled that the regulations and requirements of the state board of education regarding pupil transportation, adopted pursuant to statute, have the force and effect of law (73). By contrast, the Supreme Court of Alabama held that the state board of education had no authority over pupil transportation; that authority having been specifically conferred by the legislature upon county boards of education (74).

Regulatory authority. The authority given to state agencies concerning pupil transportation was most frequently termed general operational control and regulation of bus standards and specifications. In addition, twenty-three states gave specific control over school bus driver standards and training to a state agency; while seventeen states specified control over the inspection of school buses. A lesser number of states allowed agency control over transportation contracts, bus routes, transportation equipment purchases, and bus maintenance standards.

District Liability for Pupil Transportation Programs

The traditional immunity of school districts from liability for tortious action has come under increasingly frequent scrutiny by the legislatures and courts in the last decade. The doctrine of sovereign immunity, once virtually impenetrable, has begun to be vulnerable. Legislative action and court decisions have resulted in the waiver of tort immunity for school districts in a number of states.

Tort immunity of school districts. Specific mention of the tort immunity of school districts or officials was made in the statutes of but two states. On the other hand, eighteen states have waived the immunity of various governmental units, including school districts, by legislative action. Seven of the states have enacted general waivers, while eleven states have waived immunity only to the extent of liability

Table 9

Regulatory Authority and Types of Control Over Pupil Transportation
Provided in the Statutes of the Fifty States

	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
REGULATORY AGENCY																																																		
State Education Agency	x		x	x	x	x		x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
State Motor Vehicle Dept.							x	x																			x	x	x		x							x			x			x	x		x	
State Highway or Safety Agency		x	x	x	x											x							x			x	x						x	x					x	x			x					
State School Trans. Authority														x																x																x			
Secretary of State																																																		
Public Utilities Commission							x																						x																				
State Finance Commission																																								x									
TYPES OF CONTROL																																																	
Gen. Oper. Control & Supervision	x		x	x	x	x		x	x		x				x	x	x	x		x		x	x	x	x	x	x		x	x	x	x	x	x	x	x	x		x	x	x	x	x		x	x	x	x	x
Bus Standards & Specifications	x		x	x	x		x	x	x	x	x	x			x		x	x		x	x		x	x	x	x	x	x		x	x	x	x	x		x	x	x	x	x	x	x	x		x	x	x	x	x
Driver Standards & Instructions		x			x									x	x				x	x			x	x	x							x	x			x	x	x	x	x	x				x		x		
Bus Inspections			x		x									x	x					x							x	x	x	x						x		x	x	x		x	x					x		
Transportation Boundaries																																				x														
Transportation Contracts								x	x					x									x				x	x		x		x							x										
Bus Purchase and Bid Approval									x						x		x									x							x			x					x								
Bus Maintenance Standards									x						x											x			x			x			x														
Bus routes															x											x	x	x					x	x				x			x	x	x	x				x		a
Assign State Owned Buses																																x																		

[a]Decisions upon appeal only.

insurance or within specified financial limits. The statutory tort immunity status of the fifty states is shown in Table 10.

In addition to the legislative action which has waived the tort immunity of school districts, a number of court decisions in the past ten years have followed the precedent of the Molitor decision (75) in waiving governmental immunity. Nine states had recent court rulings which either waived school district immunity or cast considerable doubt upon its status (76). During the same period, other rulings of the courts have upheld the common law principle of sovereign immunity for school districts (77). The current common law status of tort immunity for school districts is contained in Table 11.

A majority of the court cases regarding the liability of school districts for torts arising specifically from school transportation programs were concerned with the extent and degree of care which must be exercised with school pupils. Nearly all courts have held that school bus drivers will be held personally liable for injuries growing out of their own negligent acts. Most courts have also held that drivers are precluded from offering governmental immunity as a defense.

The degree of care to be exercised by bus drivers has been described by the courts in terms that range from extraordinary to reasonable (78). Courts have given almost universal acceptance to the duty of a driver to warn pupils of the dangers surrounding pupil transportation (79). Further, there is general agreement that the driver's zone of responsibility encompasses the loading and unloading of pupils as well as for their safety while the bus is in motion (80). Courts, however, have been reluctant to find a driver negligent in the event an accident was considered unavoidable (81).

Indemnification of school transportation programs. The trend toward loss of the defense of governmental immunity for tortious action has prompted state action toward the authorization of indemnification measures for local school districts. Table 12 indicates the indemnification measures currently authorized in each of the states.

Liability insurance has been the most popular indemnification measure to be made available to school districts. Forty-one states have authorized the use of liability insurance by school districts. Of the statutory provisions relating to school district liability insurance, twenty are permissive in nature and twenty-one are mandatory.

In addition, four states have enacted save-harmless statutes by which the state guarantees that school employees will suffer no financial loss due to damage suits resulting from the performance of their duties. Two states are self-insured through the creation of state accident contingency funds from which damages may be paid from the state treasury, thus absolving districts of financial responsibility for injuries resulting from pupil transportation. Two states give local districts the authority to levy special taxes for the satisfaction of judgments.

Table 10

Statutes Relating to Tort Immunity of School Districts
in the Fifty States

PROVISION	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
IMMUNITY WAIVED																																																	
School District					x		x		x		x		b					x	a			x	a	b				b			a		a	a			x												
Bus Drivers				x																							x																		a	x			
IMMUNITY SPECIFIED																																																	
Board Members	x			x																																													
State Employees		x																																															

a. To extent of insurance only.
b. Within specified financial limits.

Table 11

Common Law Status of Liability of School Districts
for Torts in States With No Statutory Waiver

State	Status	State	Status
Alaska	Immune	Montana	Liable[5]
Arizona	Liable	New Hampshire	Immune
Arkansas	Immune	New Jersey	Liable
Colorado	Immune	New York	Liable
Georgia	Liable	North Dakota	Immune
Indiana	Immune	Ohio	Immune
Iowa	Immune	Oklahoma	Immune[3]
Kansas	Immune[2]	Pennsylvania	Immune[3]
Kentucky	Immune	South Dakota	Immune
Maryland	Immune	Tennessee	Liable[5]
Michigan	Immune[3]	Texas	Immune[3]
Mississippi	Liable[4]	Wisconsin	Liable
Missouri	Immune	Wyoming	Liable[5]

[1]Exceptions: 1) when a nuisance is maintained, 2) in ministerial acts, and 3) when waived by statute.

[2]In governmental functions if no nuisance is maintained.

[3]In governmental functions.

[4]To the extent of the $5,000 statutory limit.

[5]To the extent of insurance coverage.

Table 12

Statutory Provisions Relating to the Indemnification of School Transportation Programs in the Fifty States

PROVISION	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
LIABILITY INSURANCE																																																		
Mandatory					x		x	x	x	x		x		x		x				x						x	x	x		x										a		b		x				x	x		a	x	x
Permissive			x	x		x							x		x		x	x				x	x					x		x		x	x	x	x	x	x			x			x						
INDEMNIFICATION OTHER THAN INSURANCE																																																		
Same-Harmless statute							x																						x		x						x													
State accident contingency fund																								x								x																		
Authority to satisfy judgments from school funds															x																																				
Authority to levy tax to satisfy judgments															x	x																																			

a. Privately owned vehicles.
b. State owned buses.

In ruling on the powers of school districts to purchase liability insurance, the courts have uniformly held that the express authority contained in the statutes of the state cannot be exceeded. Following this line of reasoning, courts have held that statutory authorization to purchase liability insurance covering pupil transportation programs did not authorize the purchase of public property damage insurance or general liability insurance for the school district (82).

School District Purchasing and Contracting Powers

Early statutes which authorized the transportation of school pupils made no specific mention of how the transportation was to be provided. However, as the transportation of pupils became a major undertaking, the states became more specific as to the conditions under which the services was to be arranged. As a result, limitations were placed upon local district authority to purchase equipment and contract for transportation services.

District purchasing authority. Thirty-six states grant specific authority to local school districts to purchase transportation equipment. Nine of these states require the purchases to be made based upon competitive bids. Five states require that the purchase or the bids received be approved by an agency of the state. In four states, transportation equipment is purchased either by or through a state agency. Four additional states make centralized purchasing facilities available to local school districts. The statutory provisions for the purchase of school transportation equipment are summarized in Table 13.

In the absence of specific statutory requirements, courts have held that local districts are not required to solicit bids for transportation equipment, nor are they required to accept only the lowest bid submitted (83).

District contracting authority. Forty-two states grant specific authority to local school districts to contract for transportation services. Seven states require that transportation contracts be prepared or approved by an agency of the state. Five states require that competitive bids or proposals be solicited prior to the awarding of a contract. The maximum duration of a transportation contract is specified in sixteen states. Although the limits range from three to seven years, the most common limit for contracts is five years. The authority of school districts in the various states to contract for transportation services is shown in Table 14.

General Operational Authority

As pupil transportation programs expanded into areas other than the movement of children to and from school, the general operating procedures for the programs have become increasingly complex. Bus

Table 13

State Statutory Provisions Relating to School District Authority to Purchase School Transportation Equipment

PROVISION	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
PURCHASING AUTHORITY GRANTED TO LOCAL DISTRICTS	x			x	x		x		x	x	d	x	x	x	x	x	x		x			x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x			x	x	x	x				x		
Competitive proposals or bids required				a	b									x			x																	x	x	x					x					x			
State agency approval of purchase or bids required									c								x							x							x	x																
CENTRALIZED PURCHASING REQUIRED																													e				x							e			x						
CENTRALIZED PURCHASING PERMITTED OR PROVIDED				x					x								x																		x														

a. Purchases from revolving loan fund.
b. If purchase is in excess of $1000.
c. If purchase is in excess of $300.
d. Pupil transportation is a state responsibility.
e. St. Bd. of Educ. provides purchasing agent for supervisory unions.
f. State Finance Comm. purchases all pupil transportation equipment.
g. Amounts in excess of $1500.
h. Amounts in excess of $2500.

Table 14

School District Authority to Contract for Transportation Services
as Specified in the Statutes of the Fifty States

PROVISION	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
AUTHORITY TO CONTRACT FOR TRANSPORTATION SERVICES	x	x	x	x	x	x	x	x		x	b	x	x	x	x	x	x	x	x	x	x	x	x	c		x		x		x	x	x	x			x	x	x	x	x	x		x		x		x	
State agency approval of contracts required					a			x				x											x						d		e																	x	
Competitive bids or proposals required												x									x																												
Maximum duration of transportation contract																																	f																
5 years					x		x					x							x							x						x												x				
4 years														x															x	x																			
3 years													x		x						x																											x	

a. If contract is for an amount in excess of $2500.
b. Pupil transportation is a state responsibility.
c. Private contracts are to be replaced with public transportation when practicable.
d. State agency prepares contracts.
e. If contract is in excess of $2500.
f. Seven years.

routes, standards for bus routes, and extended educational and non-educational use of school buses have received considerable legislative and some judicial attention.

Bus routing authority and standards. The statutes of eighteen states grant specific routing authority to local school districts. However, in fourteen of these states some form of state approval of routes is required. Statutory routing authority and standards are contained in Table 15.

A majority of court decisions has held that the courts have no control over the formation of bus routes when there is no abuse of board discretion. Board discretion in routing has been held to prevail even though pupils are required to cross busy highways in order to reach the bus (84).

A number of states have enacted legislation prescribing certain routing standards for school buses. Three states have set the maximum time that a child may be required to travel by bus in order to reach school. Six states have specified the maximum distance that a pupil may be expected to travel to reach the school bus stop. Eighteen states permit the routing of school buses into other school districts, while four permit routing into other states.

The courts have consistently held that school districts do not have the duty, and in some cases the authority, to provide transportation outside of the school district or state without a specific legislative enactment to that effect. Districts are, however, often permitted to provide such transportation (85).

Extended use of pupil transportation equipment. As efforts to broaden the educational experiences of children beyond the classroom have grown, so has grown the extension of pupil transportation programs. Thirty-seven states have authorized the use of pupil transportation for purposes other than to convey pupils to and from school. More than half of the states have authorized the use of pupil transportation for school or extra-curricular activities. Both cases litigated in the past decade have upheld transportation to school activities (86).

The statutes of six states authorize the use of pupil transportation for summer, vocational, or trade schools. Ten states permit school buses to transport teachers or other school employees. Four states allow the use of transportation for field trips and excursions.

Pupil transportation programs have frequently been extended as a part of school integration plans. Disputes have reached the courts concerning attempts which have been made by school districts to both hasten and delay school integration through the use of school transportation programs.

Table 15

School Bus Routing Authority and Standards Contained
in the Statutes of the Fifty States

PROVISION	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
AUTHORITY																																																		
Routes established by local authorities	x					x			x			x			x	x						x		x		x		x					x					x			x							x		x	x
State approval of routing required																								x		x					c	x				c				x	x		x	x				x			
ROUTING STANDARDS																																																		
Minimum distances																															x																			x
Maximum travel time																										1hr										30m							1½h							
Routes outside district permitted			x	a		x			x				x			a	a				x		a		x		x					x				d			d			d						x		x
Routes outside state permitted			x			x																	x											d																
Distance pupil may be required to travel to meet bus															b														f				e			e									f	g			

a. With consent of districts involved.
b. 2/4 mile.
c. Routes established by state transportation authority.
d. With consent of district or state involved.
e. 1 mile.
f. 1 1/2 miles.
g. 2 miles.

Where dual school systems have existed in the past, the courts have held that integration requires the integration of all school services including transportation. Also, there is common agreement by the courts that where an open transfer plan for integration is used, buses must be routed to the maximum extent feasible to facilitate the transferring pupils (87).

Adventitious school segregation in the North has been attacked by use of a number of plans, many of which require the use of pupil transportation services. The use of pupil transportation as a part of school district plans to overcome adventitious school segregation and balance the races has been upheld in eight separate decisions. In each case, school authorities had undertaken transportation programs voluntarily as a part of a plan expressly designed to balance the races in the schools. In several decisions, recognition was given to the lack of a constitutional mandate to transport children for balancing purposes, however, the lack of such a mandate was held not to void an otherwise lawful act on the part of the board (88).

A singular case was found wherein a court had ordered the transportation of pupils to overcome racial inequities in a school system (90). In that case, the court reasoned that transportation services were essential to the successful implementation of a transfer policy.

Seven states have authorized the use of school pupil transportation for non-educational purposes. Authorization includes use by recreation and youth groups, use for agricultural and emergency needs, use for municipal activities, and use to aid summer student employment. One state makes provision for the public rental of school transportation equipment.

State provisions for the extended use of pupil transportation equipment are summarized in Table 16.

CONCLUSIONS

Conclusions, based on the findings of the study, were presented under each of the areas of concern developed in the study.

Scope of Transportation Programs

State legislatures have the power to enact pupil transportation legislation.

Boards of education may exercise wide discretion in providing pupil transportation, so long as statutory limits are not exceeded and capricious or arbitrary action is not taken.

Table 16

Extended Uses of Pupil Transportation Equipment Mentioned in the Statutes of the Fifty States

PROVISION	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	So. Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
EDUCATIONAL USES																																																		
Instructional purposes					x														x																															
School functions and events																								x										x						x	x								
School activities				x	x	x			x			x	x	x	x				x	x	x	x						x	x	x		x	x			x							x							
Extra-curricular activities				x												x							x																											
Summer school													x																																					
Vocational or trade schools					x		x																										x			x												
Field trips or tours																																	x					x										
Teachers and school employees	x						x			x				x	x		x											x				x																
NON-EDUCATIONAL USES																																																
Recreation programs					x																																												
Youth groups																																				x													
Agricultural use														x																																			
Emergency use						x								x																				x															
Public rentals																							x																											
Summer student employment					x																																												
Municipal activities																		x																																

No general duty exists for boards of education to provide pupil transportation in the absence of a legislative mandate.

General pupil transportation statutes are so restrictively interpreted as to exclude the transportation of pupils to non-public schools.

Legislation authorizing the transportation of non-public school pupils at public expense must be justified by the courts on one of the following bases if such legislation is to meet the constitutional requirements of most states:

(1) Transportation is aid to the child rather than to the institution attended.

(2) The providing of transportation is a valid means of enforcing school attendance.

(3) Transportation is necessary for the protection of the health and safety of children.

Boards of education are under no special duty to transport exceptional children in the absence of a statutory requirement.

School District Financial Authority for Pupil Transportation

Statutory authority is required for a school district to incur indebtedness for the purchase of school transportation equipment.

Fees ordinarily may not be charged for the transportation of pupils to and from school. Fees may be charged for certain optional and supplementary transportation programs in some states.

School districts are generally allowed to make payment to the parents of pupils eligible for transportation in lieu of providing the transportation.

State Organizational Patterns for Pupil Transportation

Local school districts may be subject to the rules and regulations of various state agencies in regard to pupil transportation.

When authority over pupil transportation is given by statute to a state agency, the rules and regulations of that agency have the force and effect of law.

District Liability for Pupil Transportation Programs

In most states, school districts and officials are not liable in tort for injuries sustained as a result of pupil transportation in the absence of a statute to the contrary.

School districts in a minority of states operate under court imposed liability.

Where school districts and officials are immune from liability under the common law, such immunity does not extend to the employees of the district.

District Purchasing and Contracting Powers in Regard to Pupil Transportation

School districts who legally provide transportation, have the discretionary power to purchase and maintain transportation equipment.

School districts who legally provide transportation have the discretionary power to contract for transportation services.

In the absence of mandatory legislation, school boards are not required to purchase transportation equipment or contract for transportation services solely on the basis of the lowest bid submitted.

General Operational Authority

School board action concerning the routing of school buses is not subject to review by the courts, unless discretion is abused or statutory limits are exceeded.

School boards are under no duty to route buses into other districts or states in the absence of an agreement to that effect.

Pupils may be required to walk a reasonable distance to meet a school bus.

Where open-enrollment or transfer plans are in effect to desegregate schools, buses must be routed to the maximum extent feasible to accomodate the transferring students.

School transportation services must be provided to all races on a non-discriminatory basis.

Pupil transportation may be used as part of a plan to correct school racial imbalance.

School boards in most states have the authority to use school transportation equipment for bonafide activities of the school district.

The status of non-educational use of school transportation equipment is not clearly defined.

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Appendix A

TABLE OF CONSTITUTIONS

Alabama: Constitution of Alabama of 1901.

Alaska: Constitution of the State of Alaska, 1956.

Arizona: Constitution of the State of Arizona, 1910.

Arkansas: Constitution of the State of Arkansas, 1874.

California: Constitution of the State of California, 1879.

Colorado: Constitution of the State of Colorado, 1876.

Connecticut: Constitution of the State of Connecticut, 1965.

Delaware: Constitution of the State of Delaware, 1897.

Florida: Constitution 1885, State of Florida.

Georgia: Constitution of the State of Georgia of 1945.

Hawaii: The Constitution of the State of Hawaii, 1950.

Idaho: Constitution of the State of Idaho, 1890.

Illinois: Constitution of the State of Illinois, 1870.

Indiana: Constitution of the State of Indiana, 1851.

Iowa: Constitution of the State of Iowa, 1857.

Kansas: Constitution of the State of Kansas, 1859.

Kentucky: Constitution of the State of Kentucky, 1962.

Louisiana: Constitution of the State of Louisiana, 1954.

Maine: Constitution of the State of Maine, 1965.

Maryland: Constitution of the State of Maryland, 1867.

Massachusetts: Constitution of the Commonwealth of Massachusetts.

Michigan: Constitution of the State of Michigan, 1963.

Minnesota: Constitution of the State of Minnesota, 1857.

Mississippi: Constitution of the State of Mississippi, 1890.

Missouri: Constitution of Missouri, 1945.

Montana: Constitution of the State of Montana, 1889.

Nebraska: Constitution of the State of Nebraska.

New Hampshire: Constitution of the State of New Hampshire, 1784.

New Jersey: Annotated Constitution of 1947 of New Jersey.

New Mexico: Constitution of State of New Mexico, 1911.

New York: Constitution of State of New York, 1954.

North Carolina: Constitution of North Carolina, 1868.

North Dakota: Constitution of the State of North Dakota, 1889.

Ohio: Constitution of the State of Ohio, 1851.

Oklahoma: Constitution of the State of Oklahoma, 1907.

Oregon: Constitution of the State of Oregon, 1857.

Pennsylvania: Constitution of the Commonwealth of Pennsylvania, 1874.

Rhode Island: Constitution of the State of Rhode Island and Providence Plantations, 1842.

South Carolina: Constitution of the State of South Carolina, 1895.

South Dakota: Constitution of the State of South Dakota.

Tennessee: Constitution of the State of Tennessee, 1870.

Texas: Constitution of the State of Texas, 1876.

Utah: Constitution of the State of Utah.

Vermont: Constitution of the State of Vermont, 1893.

Virginia: Constitution of Virginia, 1902.

Washington: Constitution of the State of Washington.

West Virginia: The Constitution of West Virginia, 1872.

Wisconsin: Wisconsin Constitution.

Wyoming: Constitution of the State of Wyoming.

Appendix B

TABLE OF STATUTES

Alabama: The Code of Alabama, Recompiled 1958.

Alaska: Alaska Statutes, 1962 Annotated.

Arizona: Arizona Revised Statutes, 1956.

Arkansas: Arkansas Statutes 1947.

California: West's Annotated California Code, 1960.
California Administrative Code.
California Education Code.

Colorado: Colorado Revised Statutes, 1963.

Connecticut: General Statutes of Connecticut, Revision of 1958.

Delaware: Delaware Code Annotated.

Florida: Florida Statutes Annotated.

Georgia: Code of Georgia Annotated.

Hawaii: Revised Laws of Hawaii, 1955.

Idaho: Idaho Code, 1947.

Illinois: Smith-Hurd Illinois Annotated Statutes.

Indiana: Annotated Indiana Statutes, 1948.

Iowa: Code of Iowa, 1966.

Kansas: Kansas Statutes Annotated.

Kentucky: Kentucky Revised Statutes, 1962.

Louisiana: Louisiana Revised Statutes, 1950.

Maine: Maine Revised Statutes Annotated, 1964.

Maryland: Annotated Code of the Public General Laws of Maryland, 1957.

Massachusetts: Massachusetts General Laws Annotated.

Michigan: Michigan Statutes Annotated.

Minnesota: Minnesota Statutes, 1967.

Mississippi: Mississippi Code Annotated, 1942.

Missouri: Revised Statutes of Missouri, 1959.

Montana: Revised Code of Montana, 1947.

Nebraska: Nebraska Reissue Revised Statutes, 1943.

Nevada: Nevada Revised Statutes.

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New Jersey: New Jersey Statutes Annotated, 1967.

New Mexico: New Mexico Statutes Annotated, 1953.

New York: McKinney's Consolidated Laws of New York Annotated, 1953.
New York Education Law.

North Carolina: The General Statutes of North Carolina, 1964.

North Dakota: North Dakota Century Code Annotated, 1960.

Ohio: Page's Ohio Revised Code Annotated.

Oklahoma: Oklahoma Statutes Annotated.

Oregon: Oregon Revised Statutes.

Pennsylvania: Purdon's Pennsylvania Statutes Annotated, 1959.

Rhode Island: General Laws of Rhode Island, 1956.

South Carolina: Code of Laws of South Carolina, 1962.

South Dakota: South Dakota Code of 1939.

Tennessee: Tennessee Code Annotated, 1966.

Texas: Vernon's Annotated Revised Code of the State of Texas.

Utah: Utah Code Annotated, 1953.

Vermont: Vermont Statutes Annotated.

Virginia: Code of Virginia, 1950.

Washington: Revised Code of Washington.

West Virginia: West Virginia Code Annotated.

Wisconsin: Wisconsin Statutes, 1967.

Wyoming: Wyoming Statutes Annotated, 1957.

Appendix C

ANNOTATED TABLE OF CASES

HISTORICAL-LEGAL DEVELOPMENT

Legislative Authority to Provide for Pupil Transportation

1. School District No. 3 of Atchison County v. Atzenweiler, 73 P. 927 (Kans., 1903).

   The constitutionality of the Kansas statute authorizing school consolidation and transportation of pupils was challenged as granting public funds for private use. The court upheld the statute, noting that education was of benefit to society as well as to the child.

2. Cross v. Fisher, 177 S.W. 43 (Tenn., 1915).

   The constitutionality of the transportation statute in Tennessee was challenged as being legislation for individual benefit. The court upheld the statute because any citizen could bring himself within the provision of the law.

3. Bufkin v. Mitchell, 63 So. 458 (Miss., 1913).

   The transportation statute was challenged as violating the state constitutional guarantee of due process. The court, in upholding the statute, reasoned that the rights, priveleges, and immunities of citizens were in no way violated in the use of public funds for pupil transportation.

4. Board of Education of Bath County v. Goodpaster, 84 S.W. 2d 59 (Ky., 1935).

   The pupil transportation statute was challenged as being an unconstitutional delegation of legislative authority. The court upheld the statute by interpreting the constitution as allowing for discretion in the administration of the law.

5. Additional Cases:

   Lichty v. Board of Education of Crane School District, 171 N.E. 846 (Ohio, 1929).

   Pasadena City High School District v. Upjohn, 276 P. 341 (Cal., 1929).

   Minshall v. State, 176 N.E. 888 (Ohio, 1931).

Statutory Authority Required for School Boards to Transport Pupils

6. Township School District of Bates et al. v. Elliott, 268 N.W. 744 (Mich., 1936).

   Taxpayers challenged the authority of a school district to transport pupils under a general statute which gave boards the authority to do all things necessary for the promotion of the thorough education of children. The court reasoned that transportation was not essential to the purposes of education, hence the statute in question did not authorize the use of public funds for pupil transportation.

7. Additional Cases:

   State v. Jackson, 81 N.E. 62 (Ind., 1907).

   Shanklin v. Boyd, 142 S.W. 1041 (Ky., 1912).

   Hendrix v. Morris, 191 S.W. 949 (Ark., 1917).

   State v. Cruzan, 243 P. 329 (Kans., 1926).

   State v. School District No. 70, 283 N.W. 397 (Minn., 1939).

Implied Authority to Provide Transportation Upheld

8. People ex rel. Board of Education v. Graves, 153 N.E. 49 (N.Y., 1926).

   The authority of the Commissioner of Education to require union school districts to provide pupil transportation was challenged. The court held that the state school consolidation law contained implied authority for the transportation of pupils in union school districts. The order of the commissioner was upheld.

9. Additional Cases:

   Williams v. Board of Public Instruction, 182 So. 837 (Fla., 1938).

   Malounek v. Highfill, 131 So. 313 (Fla., 1930).

   Foster v. Board of Education of Topeka, 289 P. 959 (Kans., 1930).

   Dahl v. Independent School District, 187 N.W. 638 (S.D., 1922).

Permissive and Mandatory Nature of Statutes

10. State ex rel. Klimek v. Board of Education, 283 N.W. 397 (Minn., 1939).

The plaintiff sought a writ of mandamus to compel the board to transport his son, who would otherwise be required to walk two and one-half miles cross-country. The court held that the presence of the word "may" in the transportation statute made providing transportation a matter of board discretion. The court indicated that mandamus was to compel action, not to control discretion.

11. Ex Parte County Board of Education, 84 S.W. 2d 59 (Ky., 1935).

At the request of a board of education to clarify the meaning of the state transportation statute, the court interpreted "shall" as being mandatory and "may" as allowing for discretion.

12. Additional Cases:

Carey v. Thompson, 30 A. 5 (Vt., 1894).

Hildenbrand v. School District No. 59, 15 P. 2d 412 (Kans., 1932).

State v. School District No. 70, 283 N.W. 397 (Minn., 1939).

Proctor v. Hufnail, 16 A. 2d 518 (Vt., 1940).

Interpretation of "When Necessary" in Transportation Legislation

13. Gordon v. Wooten, 152 So. 481 (Miss., 1934).

The court held that in the instant case, due to the circumstances surrounding the case, "when necessary" was construed as imposing a mandatory duty on the board to provide transportation.

Interpretation of "Convenience of Access" in Transportation Legislation

14. Board of Education of West Amwell Township v. State Board of Education, 135 A. 664 (Md., 1927).

The court interpreted that convenience of access required to board of education to furnish transportation to the pupils designated to receive such transportation by the State Board.

Board Relief From Mandatory Duty to Furnish Transportation

15. Mumm v. Troy Township School District, 38 N.W. 2d 583 (Iowa., 1949).

Plaintiff sought to force board to comply with a mandatory provision to transport pupils. The board alleged that the cost of providing the transportation would be prohibitive. The court held that cost was no factor in relieving the board of the mandatory duty.

16. Groton and Stonington Tractor Company v. Town of Groton, 160 A. 902 (Conn., 1932).

Kimminau v. Common School District No. 1, 223 P. 2d 689 (Kans., 1950).

In each case the board did not make appropriations for transportation. The court held that failure to appropriate the necessary funds did not relieve the board of the duty.

17. State ex rel. v. Board of Education of Lykens Township, 132 N.E. 16 (Ohio, 1921).

The state, on behalf of the plaintiff, sought to require the defendant board to provide a bus stop shelter for the plaintiff's child. The court held that the providing of shelters was a discretionary power of boards. Further, the court stated that the use of the word children in the transportation statute, implied that special provisions need not be made for one child.

Waller v. Mehoopany Township School District, 26 Pa. Dist. 1017 (Pa., 1917).

Board Discretion in Discontinuing Transportation Service

18. Gragg v. County Board of Education of Fayette County, 252 S.W. 137 (Ky., 1923).

The plaintiff sought to prevent the board from discontinuing transportation service for certain high school pupils. The court held that the pupil transportation statute was permissive in nature and allowed for board discretion. The court further held that discretion allowed the school board to terminate as well as initiate transportation service.

Discretion as to Who is Transported

19. Woodlawn School District No. 6 v. Brown, 223 S.W. 2d 818 (Ark., 1949).

The board was charged with discriminatory practices in the selection of pupils to be transported. In the appeal the board indicated that an honest mistake had been made in the selection process. The court held that inadvertent discrimination did not invalidate the use of discretion by the board.

Additional Cases:

Pass v. Pickens, 51 S.E. 2d 405 (Ga., 1949).

State v. School District No. 44, 231 N.W. 782 (Nebr., 1930).

Board of Education v. Board of Education, 186 N.E. 456 (Ohio, 1933).

Discretion as to Payments in Lieu of Providing Transportation

20. Reich v. Dietz School District No. 16, 55 N.W. 2d 638 (N.D., 1952).

A patron brought suit to force the school district to furnish transportation rather than to make payments in lieu thereof. The court upheld the board's discretion to either pay or transport.

Additional Cases:

People v. McKinstry, 42 N.E. 2d 68 (Ill., 1942).

Union Free School District of Monfort v. Union Free School District of Cobb, 256 N.W. 788 (Wisc., 1934).

Seiler v. Gelbar, 209 N.W. 376 (N.D., 1926).

Harkness v. School Board of District No. 3, 175 P. 386 (Kans., 1918).

Sommers v. Pullman County Board, 148 N.E. 682 (Ohio, 1925).

Transportation and Consolidation

21. Dennis v. Wrigley, 141 N.W. 605 (Mich., 1913).

The plaintiff sought to compel the board to transport a child to a consolidated school. The schools had been consolidated

under a permissive statute. The court held that consolidation was discretionary, but that when the consolidation option had been exercised, the providing of transportation became a necessary sequel.

Additional Cases:

Rysdam v. School District No. 67, 58 P. 2d 614 (Ore., 1936).

Jones v. Boulter, 41 Pa. Co. 387 (Pa., 1915).

Transportation of Parochial School Pupils

22. Oklahoma Railway v. St. Joseph's Parochial School, 127 P. 1087 (Okla., 1912).

The plaintiff sought to exclude parochial pupils from the reduced rate fares provided by statute for public school pupils. The court held that no purpose would be served by excluding the parochial pupils from the provisions of the act.

Parochial Transportation Statutes Struck Down

23. Costigan v. Hall, 23 N.W. 2d 495 (Wisc., 1946).

The plaintiff sought to enjoin the school district from transporting parochial school pupils on public school buses. The court held that the state transportation statute authorised the transportation of public school pupils and no others. The court further stated that if denial of transportation to parochial school pupils violated the equal protection clause of the constitution, then the entire statute was invalid for the same reason.

Additional Cases:

Mitchell v. Consolidated School District No. 201, 135 P. 2d 79 (Wash., 1943).

Sherrard v. Jefferson County Board, 171 S.W. 2d 963 (Ky., 1942).

Harfst v. Hoegen, 163 S.W. 2d 609 (Mo., 1941).

Gurney et al. v. Ferguson, 122 P. 1002 (Okla., 1941).

Judd v. Board of Union Free School District No. 2, 2 N.Y.S. 2d 394 (N.Y., 1938).

State ex rel. Traub v. Brown, 172 A. 835 (Del., 1934).

State ex rel. Van Straten V. Milquet, 192 N.W. 392 (Wisc., 1923).

Parochial Transportation Statutes Upheld

24. Board of Education of Baltimore County v. Wheat, 199 A. 628 (Md., 1938).

A statute authorizing the transportation of parochial pupils was challenged. The court upheld the statute stating that the act must be regarded as one with the function of enforcing attendance at school, hence constitutional.

25. Adams et al. v. County Commissioner of St. Mary's County, 25 A. 2d 377 (Md., 1942).

In response to a challenge as to the constitutionality of the statute authorizing the transportation of parochial pupils, the court held that transportation was an aid and protection to the children on the highways and was an aid to facilitate the compulsory attendance at some school.

26. Nichols v. Henry, 191 S.W. 2d 930 (Ky., 1944).

A declatory judgment was sought on the constitutionality of an act providing for supplemental transportation for pupils attending schools in compliance with state attendance laws. The court held that the act was a valid use of police power, therefore constitutional.

27. Bowker v. Baker et al., 167 P. 2d 256 (Cal., 1946).

An action was brought to restrain a school district from permitting parochial school pupils to ride a public school bus. The court ordered the transportation to continue as such benefits as were derived went to the pupils and not to the schools attended.

28. Everson v. Board of Education of Township of Ewing, 330 U.S. 855 (N.J., 1947).

A New Jersey statute provided that parochial pupils should receive benefit of transportation to school. By resolution, a board of education had provided that where no school buses were available, parents of parochial pupils would be reimbursed by the state for expenses incurred in the use of public carriers. A tax payer brought suit. On appeal to the supreme court, the plaintiff charged that the statute and the resolution were in violation of the First and Fourteenth Amendments to the United States Constitution.

The supreme court held, in a five to four decision, that the statute and resolution were not in violation of the constitution. The court stated that it did not follow that a law had a private purpose because it provided that tax-raised money would be paid to reimburse individuals on account of money spent by them in a way which furthers a public program.

The Use of Non-School Funds to Transport Parochial Pupils

29. Rawlings v. Butler, 290 S.W. 801 (Ky., 1956).

The plaintiff brought action to enjoin school officials from spending public funds and school funds for hire of teachers who were members of religious societies, for rent of school buildings from a church, and for transporting parochial students. The court held that all issues but that concerning transportation were not violative of the state constitution. On the transportation issue, the court held that public school tax money could not be used for transporting parochial school pupils, but that the fiscal courts of the state could bear such expense.

Parochial Pupil Transportation as a Violation of State Constitutions

30. School District of Robinson Township v. Houghton, 128 A. 2d 58 (Pa., 1956).

Connell v. Board of School Directors of Kennett Township et al., 52 A. 2d 645 (Pa., 1947).

Silverlake Consolidated School District v. Parker et al., 29 N.W. 2d 214 (Iowa, 1947).

Visser v. Nooksack Valley School District, 207 P. 2d 198, (Wash., 1949).

McVey V. Hawkins, 258 S.W. 2d 927)Mo., 1953).

Pupil Transportation as a Governmental Function

31. Rankin v. School District No. 9, 23 P. 2d 132 (Ore., 1933).

The court in ruling on the liability of school districts, characterized the nature of a governmental function. The underlying test is whether the act is for the common good of all without the element of special corporate benefit or pecuniary profit. The court held that pupil transportation met the test as a governmental function.

Additional Cases:

Almond v. Day, 97 S.E. 2d 824 (Va., 1957).

Wallace v. Laurel County Board of Education, 153 S.W. 2d 915 (Ky., 1941).

McKnight v. Cassaday, 174 A. 865 (N.J., 1934).

Benton v. Board of Education, 161 S.E. 96 (N.C., 1931).

Liability of School Districts and Officials Denied

32. Ayers v. Hartford Accident and Indemnity Company, 106 F. 2d 958 (Ga., 1939).

An action was brought to recover damages for the death of a pupil in a school bus accident. The court, in refusing damages cited the conveying of pupils to and from school as being a governmental function, hence divesting school officials and their agents of any liability.

33. Additional Cases:

Tapscott v. Page, 17 Alas. 507 (Alas., 1958).

Roberts v. Baker, 196 S.E. 104 (Ga., 1938).

Schornack v. School District No. 17, 266 N.W. 141 (S.D., 1936).

McKnight v. Cassady, 174 A. 865 (N.J., 1934).

Forrestor v. Somerlott, 163 N.E. 121 (Ind., 1928).

Liability of School Officials Upheld

34. Bronaugh v. Murray, 172 S.W. 2d 591 (KY., 1943).

A Kentucky statute required bus drivers to carry liability insurance policies. The school directors had failed to see that the requirement was met. Therefore, the court held the directors liable for damages resulting from a bus-automobile accident.

Betts v. Jones, 166 S.E. 589 (N.C., 1932), app. rev., 181 S.E. 334 (N.C., 1935).

The court held the school directors liable for damages due to injuries suffered in a bus accident. The court reasoned that the action of the directors in employing a reckless and unfit driver, was willful, wrongful, and corrupt.

Additional Cases:

35. Tracy v. Davis, 123 F. Supp. 160 (Ill., 1954).

36. Embody v. Cox, 289 P. 44 (Wash., 1930).

Phillips v. Hardgrove et al., 296 P. 559 (Wash., 1931).

Liability Insurance and Governmental Immunity

37. Krasner v. Harper et al., 82 S.E. 2d 267 (Ga., 1954).

A plaintiff sought damages for injuries sustained when his car was forced off the road by a school bus. The court held that liability insurance did not create district liability. Liability could only be imposed by statute.

38. Additional Cases:

Thomas v. Broadlands, 109 N.E. 2d 636 (Ill., 1952).

Rittmiller v. School District No. 84, 104 F. Supp. 187 (Minn., 1952).

Bradfield v. Board of Education, 36 S.E. 2d 512 (W. Va., 1945).

Utz v. Board of Education of Rock District, 160 S.E. 566 (W. Va., 1931).

Liability Insurance as a Waiver of Governmental Immunity

39. Wilson v. Maury County Board of Education, 302 S.W. 502 (Tenn., 1957).

A plaintiff sought damages for injuries sustained in an automobile collision with a school bus. The board of education offered the defense of governmental immunity. The court held that a board waived the defense of governmental immunity to the extent of liability insurance carried on school buses.

40. Additional Cases:

Rogers v. Butler, 92 S.W. 2d 414 (Tenn., 1936).

Taylor v. Knox County Board, 167 S.W. 2d 700 (Ky., 1942).

Taylor v. Kobble, 187 S.W. 2d 648 (Tenn., 1945).

Liability of School Bus Driver

A number of cases have been litigated which resulted in court opinions as to the degree of care required of a school bus driver. As the care required was often stated in dictum, only the case citations were included in each classification.

Greater than common carrier care required.

41. Archuleta v. Jacobs, 94 P. 2d 706 (N.M., 1939).

Tipton v. Willey, 191 N.E. 804 (Ohio), 1934).

Bagdad Land and Lumber Company v. Boyette, 140 So. 798 (Fla., 1932).

Machenheimer v. Falknur, 255 P. 1031 (Wash., 1927).

Common carrier care required of driver

42. Leach v. School District No. 322, 85 P. 2d 660 (Wash., 1938).

Sheffield v. Lovering, 180 S.E. 523 (Ga., 1935).

Phillips v. Hardgrove, 296 P. 559 (Wash., 1931).

Less than common carrier care required of driver

43. Gaudette v. McLaughlin, 189 A. 872 (N.H., 1937).

Shannon v. Central-Gaither School District, 23 P. 2d 769 (Cal., 1933).

Extreme care required of driver

44. Eason v. Crews, 77 S.E. 2d 245 (Ga., 1953).

Driver negligence the proximate cause

45. Falstrom v. Denk, 23 P. 2d 325 (Ore., 1933).

Pendarvis v. Pfeifer, 182 So. 307 (Fla., 1938).

Allyn and Bacon v. Nicholson, 199 S.E. 771 (Ga., 1938).

Driver knowledge of danger

46. Keirn v. McLaughlin, 1 S.E. 2d 176 (W. Va., 1939).

Pelfrey v. Snowden, 102 S.W. 2d 352 (Ky., 1937).

Dickerhoof v. Blair, 6. N.E. 2d 990 (Ohio, 1936).

Contributory negligence

47. Pendarvis v. Pfeifer, 182 So. 307 (Fla., 1938).

Gilcrease v. Speight, 6 So. 2d 95 (La., 1942).

Discretion in the Purchase of Buses by School Districts

48. Scott v. Mattingly, 182 So. 24 (Ala., 1938).

A taxpayer, who engaged in the selling of trucks and automobiles, charged the board with purchasing school transportation equipment at a price higher than was necessary. The court upheld the board's right to determine the character of the buses purchased, and that in the absence of fraud or abuse of discretion, the courts were powerless to intervene.

Bonded Indebtedness for School Bus Purchases

49. Bodine v. Johnson, 222 P. 993 (Okla., 1924).

An action was brought challenging school board authority to purchase transportation equipment. The court held that school board discretion extended to the purchase of transportation equipment, but bonds could not be issued for such purchases unless specifically authorized by statute.

Allard v. Board of Education, 129 N.E. 718 (Ohio, 1920).

Board Discretion in School Bus Routing

50. State ex rel. Miller v. Joint School District No. 1, 92 N.W. 2d 232 (Wisc., 1958).

Woodlawn School District No. 6 v. Brown, 223 S. W. 2d 818 (Ark., 1941).

Taxpayers brought suit when the local board of education chose not to follow the recommendation of the patrons in the annual district meeting to route school buses into long driveways to pick up children. The court upheld the right of the board in using discretion as to the proper and most economical routing of buses.

Transportation Denied for School Activities

51. Schmidt v. Blair, 213 N.W. 593 (Iowa., 1927).

A taxpayer challenged the use of public funds to transport pupils to and from extra-curricular activities. The court held that the legislature had authorized only for the transportation of pupils to and from school.

Carothers v. Board of Education. 109 P. 2d 63 (Kans., 1941).

Transportation Allowed for School Activities

52. Bates v. Escondido Union High School District, 48 P. 2d 728 (Cal., 1935).

The use of school transportation for a summer tour of an agricultural school was challenged. The court held that such a tour was a regularly and legally constituted school activity and as such was a valid use of school transportation.

Chantlin v. Arcadia Parish School Board, 100 So. 2d 908 (La., 1958).

Transportation Allowed if Activity Required Pupil Attendance

53. Beard v. Board of Education of North Summit, 16 P. 2d 900 (Utah., 1932).

The practice of transporting pupils to school activities on school buses was challenged by a taxpayer. The court held that only where attendance at such activities was required, could the taxpayers be expected to support the transportation.

Transportation Outside Local District Not Allowed

54. Pass v. Pickens, 51 S.E. 2d 405 (Ga., 1949).

The plaintiff charged that the school board's refusal to transport pupils to a grammar school in another district was resulting in inferior educational opportunities for children. The court upheld the board's refusal stating that such judgments belonged to the school boards.

Brawley School District v. Kight, 173 S.E. 2d 125 (Ark., 1943).

Reaves v. Sadler, 189 So. 141 (Fla., 1939).

State ex rel. Cook v. Board of Education, 25 N.E. 2d 317 (Ohio, 1939).

Steele v. Board of Education of Haw Creek Township, 2 N.E. 2d 118 (Ill., 1936).

State ex rel. Cook v. Widolf, 167 N.E. 633 (Ind., 1929).

Douglas v. Board of Education of Johnson County, 138 S.E. 226 (Ga., 1927).

Board of Directors of Gould School District v. Holdtoff, 285 S.W. 357 (Ark., 1926).

State ex rel. Taylor v. Whetzel, 150 N.E. 766 (Ind., 1926), overruling, 149 N.E. 369 (1925).

Authority or Duty to Transport Outside of District Upheld

55. White v. Jenkins, 209 S.W. 2d 457 (Ark., 1948).

The school directors were upheld in contracting with another district to teach high school students and to use its own school bus to transport the students to the high school, even though the expenditures for this purpose left the local district without sufficient funds to operate the elementary schools. The court was reluctant to interfere even though the wisdom of the decision was open to question.

Herman v. Medicine Lodge School District, 71 N.W. 2d 323 (N.D. 1955).

Grenada County School Board v. Provine, 81 So. 2d 674 (Miss., 1955).

Keever v. Board of Education of Gwinnet County, 3 S.E. 2d 886 (Ga., 1939).

State ex rel. Lien v. School District No. 73, 76 P. 2d 330 (Mont., 1938).

Snipes v. Anderson, 175 S.E. 540 (Ga., 1934).

Eastham v. Greenup County Board of Education, 56 S.W. 2d 550 (Ky., 1933).

Crocker v. Common School District No. 8, 254 N.Y.S. 831 (N.Y., 1932), aff'd. 256 N.Y.S. 999 (1932).

Woelk v. Consolidated School District No. 1, 299 P. 648 (Kans., 1931).

CURRENT LEGAL STATUS

Pupil Transportation as a Governmental Function

56. City of Bloomfield v. Davis County School District, 119 N.W. 2d 909 (Iowa, 1953).

The city sought to enjoin the school district from installing a bulk gasoline storage tank for school buses. The court, in ruling for the school district, noted that the maintenance of schools included the providing of transportation. Thus, pupil transportation was a governmental function and not subject to municipal zoning ordinances.

Duty of Boards to Transport Pupils

57. Conecuh County Board of Education v. Campbell, 162 So. 2d 233 (Ala., 1964).

A taxpayer charged that providing transportation for pupils to consolidated schools and not providing transportation to non-consolidated schools was discriminatory. The court held that statutory authority for transportation to consolidated schools conferred no duty on the board to provide transportation to other types of schools.

58. Additional Cases:

Galstan v. School District of Omaha, 128 N.W. 790 (Neb., 1964).

Raymond v. Paradise Unified School District, 31 Cal. Rptr. 847 (Calif., 1963).

Graves v. Town of Fairhaven, 155 N.E. 2d 178 (Mass., 1959).

Discontinuing Transportation Services

59. Studley v. Allen, 251 N.Y.S. 2d 138 (N.Y., 1965).

The plaintiff sought to obtain a writ to compel resumption of transportation service. The court held that the board's judgment as to the hazards in providing such service would not be reversed.

60. Landerman v. Churchill Area School District, 200 A. 2d 867 (Pa., 1964).

The plaintiff sought to compel restoration of service under a permissive transportation statute. The court held that the plaintiff must show arbitrary action on the part of the board in discontinuing the service before the court could intervene.

61. Manjares v. Newton, 49 Cal. Rptr. 805 (Cal., 1966).

As the result of a suit to compel restoration of transportation service, the court held that restoration could not be refused solely because of the possibility that other requests would follow with a resulting increase in operational expense.

62. Town of Waterford v. Connecticut State Board of Education, 169 A. 2d 891 (Conn., 1961).

The town wished to overrule an order of the state board which required the initiation of a pupil transportation program to operate over less that the minimum distance prescribed by statute, but required because of safety factors. The court, in upholding the ruling of the state board, held that due consideration must be given to both safety and distance.

Distance Specifications

63. People ex rel. Cantu v. School Directors, 208 N.E. 2d 301 (Ill., 1965).

A challenge was made to the statutory one and one-half mile distance requirement for a pupil to be eligible for transportation. The court upheld the distance requirement, stating that such a requirement did not result in inadequate transportation.

64. Additional Cases:

Bermington v. Commissioner of Education, 266 N.Y.S. 2d 700 (N.Y., 1966).

Studley v. Allen, 261 N.Y.S. 2d 138 (N.Y., 1966).

Rathbone v. Lingle, 84 Dauph. 140 (Pa., 1965).

Perry v. Board of Education of Union Free School District No. 8, 233 N.Y.S. 2d 454 (N.Y., 1962).

Distance Measurement

65. Madison County Board v. Grantham, 168 So. 2d 515 (Miss., 1964).

Suit was brought by the board to enjoin parents from interfering with the transportation of eligible pupils. The court stated in dictum that the one mile distance required by statute was to be measured by the nearest travelled road from where pupils were loaded and unloaded.

66. Additional Cases:

Perry v. Board of Education, 233 N.Y.S. 2d 454 (N.Y., 1962).

Gandt v. Joint School District No. 3, 90 N.W. 2d 549 (Wisc., 1958).

Decisions Upholding Non-Public Pupil Transportation at Public Expense

67. Alexander v. Bartlett, 165 N.W. 2d 445 (Mich., 1968).

A declatory judgment was sought on the constitutionality of a statute which provided for the transportation of pupils to non-public schools. The court upheld the statute, declaring that the primary purpose of the act was to help children receive an education in safety and good health. Therefore, the act served a secular purpose.

68. Additional Cases:

McCanna v. Sills, 247 A. 2d 691 (N.J., 1968).

Snyder v. Newtown, 161 A. 2d 770 (Conn., 1960).

Decisions Which Disallowed the Transportation of Non-Public Pupils at Public Expense

69. Spears v. Honda, 449 P. 2d 130 (Hawaii, 1968).

The constitutionality of a statute which allowed all school pupils to be transported at public expense was challenged. The court held that to include non-public

and parochial pupils within the meaning of the statute would tend to subsidize and strengthen the schools in violation of the state constitution. Therefore, the court interpreted the statute as applying to public school pupils only.

70. Additional Cases:

Opinion of the Justices, 216 A. 2d 668 (Del., 1966).

Board of Education v. Antone, 384 P. 2d 911 (Okla., 1963).

Matthews v. Quinton, 362 P. 2d 932 (Alas., 1961).

Squires v. Augusta, 153 A. 2d 80 (Me., 1959).

Transportation of Exceptional Children

71. Knauff v. Board of Education, 293 N.Y.S. 2d 133 (N.Y., 1968).

A suit was brought to force a local district to provide transportation for a pupil to a school for the deaf. The court stated that in the absence of a statute to that effect, the board was under no duty to provide transportation to the school for the deaf.

Schutte v. Decker, 83 N.W. 2d 69 (Nebr., 1957).

Authority to Charge Fees for Pupil Transportation

72. Japs v. Board of Education, 291 S.W. 2d 825 (Ky., 1956).

A suit was brought to compel the school district to provide transportation without charge to pupils attending the high schools of the district. The transportation statute of the state required only the transportation of elementary school pupils. The court held that the board was under no duty to provide transportation to high school pupils, and if such transportation was provided, fees could be charged.

Regulatory Authority Over Pupil Transportation

73. Mikes v. Baumgartner et al., 152 N.W. 2d 732 (Minn., 1967).

An action was brought to recover damages for injuries sustained as a result of a school bus accident. The defendant driver contended that he violated only the regulations of the state board of education and not the

laws of the state. In finding the driver negligent, the court stated that the regulations of the state board concerning the operation of school buses had the force and effect of law.

Town of Waterford v. Connecticut State Board of Education, 169 A. 2d 891 (Conn., 1961).

74. Opinion of the Justices, No. 180., 160 So. 2d 648 (Ala., 1964).

Decisions Overturning the Principle of Sovereign Immunity

75. Molitor v. Kaneland, 163 N.E. 2d 89 (I11., 1959).

An action was brought by a taxpayer, on behalf of his son, to collect damages for injuries sustained in a school bus accident. The trial court dismissed the suit due to the sovereign immunity of school districts. On appeal, a higher court overthrew the immunity doctrine as a concept not consistent with current concepts of right and justice.

76. Additional Cases:

Stone v. Arizona Highway Commission, 381 P. 2d 107 (Ariz., 1963).

Board of Education of Richmond County v. Fredericks, 147 S.E. 2d 789 (Ga., 1966).

Durr v. Alfred Jacobshagen Company, Inc., 139 So. 2d 852 (Miss., 1962).

Longpre v. Joint School District No. 2, 443 P. 2d 1 (Mont., 1968).

Jackson v. Hankinson, 238 A. 2d 685 (N.J., 1968).

Cioffi v. Board of Education of New York, 278 N.Y.S. 2d 249 (N.y., 1967).

Wilson v. Maury County Board of Education, 302 S.W. 2d 502 (Tenn., 1957).

Holytz v. Milwaukee, 115 N.W. 2d 618 (Wisc., 1962).

Maffei v. Town of Kemmerer, 338 P. 2d 808 (Wyo., 1959), reh. den., 340 P. 2d 759 (1950).

Court Decisions Upholding Principle of Sovereign Immunity

77. Tapscott v. Page, 17 Alas. 507 (Alas., 1958).

An action was brought to recover damages from a school bus driver and a school district for injuries sustained in a school bus accident. The court held that a statute providing that an action could be maintained against a public body did not impose liability, but merely offered an avenue of recovery where liability otherwise existed.

St. Francis Drainage Company v. Austin, 296 S.W. 2d 668 (Ark., 1956).

Tesone v. School District No. Re-2, 296 P. 2d 82 (Colo., 1963).

Forrester v. Somerlott, 163 N.E. 121, (Ind., 1928).

Graham v. Worthington, 146 N.W. 2d 626 (Iowa, 1966).

Koehn v. Board of Education of Newton, 392 P. 2d 949 (Kans., 1964).

Wood v. Board of Education of Danville, 412 S.W. 2d 877 (Ky., 1967).

Weisner v. Board of Education, 206 A. 2d 560 (Md., 1965).

Meridith v. City of Melvindale, 160 N.W. 2d 793 (Mich., 1968).

Smith v. Consolidated School District No. 3, 408 S.W. 2d 50 (Mo., 1966).

Longpre v. Joint School District No. 2, 443 P. 2d 1 (Mont., 1968).

Huff v. Northampton County Board of Education, 130 S.E. 2d 26 (N.C., 1963).

Fetzer v. Minot Park District, 138 N.W. 2d 601 (N.D., 1965).

Corbean v. Xenia City Board of Education, 366 F. 2d 480 (Ohio, 1966).

Dahl v. Hughes, 347 P. 2d 208 (Okla., 1964).

Myerhoffer v. East Hanover Township School District, 280 F. Supp. 81 (Pa., 1968).

Conway v. Humbert, 145 N.W. 2d 524 (S.D., 1966).

Dealey v. Dallas County Junior College, 434 S.W. 2d 724 (Tex., 1968).

Bus Driver Liability and Care

78. Hawkins County v. Davis, 391 S.W. 2d 658 (Tenn., 1965).

An action was brought against a county for the wrongful death of a child when struck by an auto after alighting from a school bus. In recommending a new trial, the court held that only reasonable care needed to be exercised by private carriers.

Hunt v. Clifford, 209 A. 2d 182 (Conn., 1965).

Sepulvado v. General Fire and Casualty Company, 146 So. 2d 428 (La., 1962).

Burke County Board of Education v. Raley, 123 S.E. 2d 272 (Ga., 1961).

Adams v. Great American Indemnity Company, 116 So. 2d 307 (La., 1959).

79. Norris v. American Casualty Company, 176 So. 2d 677 (La., 1965).

Action was brought against the insuror of a school district for the wrongful death of a boy crushed under the wheels of a bus. The court held that the fact that the driver had warned the pupils not to come into the street until the bus had stopped, relieved him of negligence.

Kingston v. Blake, 201 A. 2d 460 (1964).

80. Huff v. Northhampton County Board of Education, 130 S.E. 2d 26 (N.C., 1963).

Action was brought against the driver of the bus for injuries suffered by a girl as the result of a fight with another. Although the court did not find the evidence sufficient to hold the driver negligent, it did specify the duty of the driver to supervise the conduct of his passengers to insure their welfare.

Petron v. Waldo, 139 N.W. 2d 484 (Minn., 1965).

Miller v. Watkins, 355 S.W. 2d 1 (Mo., 1962).

Thomas v. Kimsey, 322 S.W. 2d 754 (Mo., 1959).

81. Schultz v. Cheney School District No. 360, 371 P. 2d 59 (Wash., 1962).

Action was brought on behalf of a girl who was thrown or who fell from her seat on a school bus. The driver had been stung by a bee and lost control of the bus as a result. The court held that the driver was not negligent in such an unavoidable accident.

Langville v. Glen Bernie Coach Line Inc., 195 A. 2d 717 (Md., 1963).

Liability Insurance for School Transportation

82. State Farm Mutual Insurance Company, v. Jones, 104 S.E. 2d 725 (Ga., 1962).

A claim was made against a school district for injuries suffered in an accident on the school premises. The school district had a liability policy covering school transportation, but none covering general liability. Attempt was made by the plaintiff to recover under the transportation policy. The court refused the claim stating that no insurance was required for the general public, and that the bus policy did not encompass the general liability of the district.

Norris v. American Casualty Company, 176 So. 2d 677 (La., 1965).

Purchase of Transportation Equipment

83. Hahn v. Palmerton Area School District, 32 D & C 2d 91 (Pa., 1963).

An action was brought against school district due to school purchasing procedures. The court held that in the absence of a statutory requirement school districts were not required to advertise for bids prior to making purchases.

Bus Routing Authority and Standards

84. Price v. York, 164 N.E. 2d 617 (Ill., 1960).

A suit was brought against a driver and a school district to recover for the death of a child who was killed when she was struck by an auto while attempting to cross the highway to board a bus. The court held that no duty was owed to

the child while she was coming from home to the bus. Further, the court stated that the district was under no duty to route buses so that children would not have to cross highways.

85. Ex parte Perry County Board of Education, 180 So. 2d 246 (Ala., 1965).

A writ was sought to compel a school district to transport children to a newly formed school outside of the local district. The court held that in the absence of an agreement between school districts, there was no duty for the district to transport pupils beyond its territorial limits.

Board of Education v. Allen, 192 N.Y.S. 2d 186 (N.Y., 1959).

Brown v. Allen, 256 N.Y.S. 2d 151 (N.Y., 1965).

Transportation for Extra-Curricular Activities

86. Burke County Board of Education v. Raley, 123 S.E. 2d 272 (Ga., 1961).

In a damage suit resulting from a school bus accident, the court held the board and driver liable for negligence. The court stated that the board was not restricted to providing transportation only to and from the homes of pupils.

State ex rel. North Carolina Utilities Commission v. McKenna, 118 S.E. 2d 134 (N.C., 1961).

School Integration and Pupil Transportation

87. U. S. v. Jefferson County Board, 372 F. 2d 836 (1966), cert. den., 389 U. S. 840 (1966), reh. den. 389 U. S. 965 (1i66).

As part of a comprehensive school desegregation decision the court stated that where an open transfer plan for integration was in operation, the buses must be routed to the maximum extent feasible to facilitate the pupil transfers.

School Transportation and Racial Balance

88. Katalinic v. City of Syracuse, 254 N.Y.S. 2d (N.Y., 1964).

Action of a school board in closing a largely white school and transporting 200 pupils to an integrated school

was challenged as being directed solely toward the achievement of racial balance. The court held that, although racial balance was a factor in the board's decision, that fact was not sufficient to void the decision.

89. Additional Cases:

Strippoli v. Bickal, 250 N.Y.S. 2d 969 (N.Y., 1964), aff'd. 209 N.E. 2d 123 (1964).

Di Sano v. Storandt, 253 N.Y.S. 2d 411 (N.Y., 1964).

Balabin v. Rubin, 250 N.Y.S. 2d 281 (N.Y., 1964).

Van Blerkom v. Donovan, 253 N.Y.S. 2d 692 (N.Y., 1964).

Guida v. Board of Education, 213 A. 2d 843 (Conn., 1965).

Decisions Which Ordered the Use of Pupil Transportation to Correct Racial Inequities

90. Hobson v. Hansen, 269 F. Supp. 401 (D.C., 1967), app. dism. 393 U.S. 801 (1968).

The plaintiff alleged in his complaint that the District of Columbia school system provided an inferior education for Negro and poor white children. Concerning the transportation of pupils, the court ruled that although the operating costs of the district might rise, the benefits of transporting pupils outweighed the additional cost. Consequently, the court ordered the district to bus pupils from certain overcrowded Negro schools into under-utilized white schools.